CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 386

Heard at Montreal, Tuesday, November 14, 1972

Concerning

CANADIAN PACIFlC LIMITED (CP RAIL), PRAIRIE REGION

and

UNITED TRANSPORTATION UNION (T)

DISPUTE:

Claim of Conductor H. A. Davey and crew, Moose Jaw, for 33 miles deducted from ticket submitted September l3th, 1971, account crew taking time to eat at North Portal.

JOINT STATEMENT OF ISSUE:

Conductor Davey and crew were called at Moose Jaw for 0215 on September 12th to handle a train to North Portal, arriving at North Portal at 0920 and the crew were off duty at 0955 the same day. On September l3th, the crew was called at North Portal at 0200 for 0400 which was eighteen hours and five minutes from the time going off duty on previous trip. When reporting for duty at North Portal for 0400, the Conductor advised the Operator on duty that after making up their train, the train crew would await the opening of the restaurant in order to have their breakfast before departure.

The crew reported for duty at the appointed time, made up their train consisting of one car and caboose and then remained at North Portal until the restaurant opened at Portal, North Dakota at 0600 at which time they obtained their breakfast. The train departed from North Portal at 0710 on September 13th. The crew claimed payment of initial terminal time from 0400 until 0710, three hours and ten minutes, i.e., 40 miles, but the claim was reduced by the Company to provide payment of thirty minutes under the provisions of Article 23, Clause (g) of the Collective Agreement, which reads.

"Article 23 - Miscellaneous Service

(g) - Meals Enroute

Time occupied in taking meals enroute will not be deducted in computing overtime or arbitraries unless such overtime or arbitraries have been increased by trainmen delaying the train by taking time to eat."

The Union contends that the Company has violated Article 23, Clause (g) of the Collective Agreement by the reduction in the claim as submitted.

FOR THE EMPLOYEES:	FOR THE COMPANY:
(SGD.) R. T. O'BRlEN GENERAL CHAIRMAN	(SGD.) W. J. PRESLEY GENERAL MANAGER, CP RAIL PRAIRIE REGION

There appeared on behalf of the Company:

P. A. Maltby, - Supervisor Labour Relations, CP Rail, Winnipeg
D. Wilson - Labour Relations Assistant, CP Rail, Montreal
L. J. Masur - Supervisor Labour Relations, CP Rail, Vancouver

And on behalf of the Brotherhood:

R. T. O'Brien - General Chairman, U.T.U.(T) Calgary

AWARD OF THE ARBITRATOR

What happened in the instant case was that the train crew, reporting for duty as called at 0400, delayed the departure of the train until such time as they had been able to have breakfast at a restaurant. That is, they delayed the train by taking time to eat. Thus, the situation appears to come clearly within the exception to article 23, clause (g), set out in the joint statement of issue. In such a case, time occupied in taking meals may properly be deducted.

The union's argument in this case tends, essentially, to show that it was reasonable for the grievors to wait until they had had their breakfast before taking the train out. It is not necessary to determine that question in this case, because the issue is not whether their behaviour was proper, but rather whether they are to be paid for the time consumed. Since, it would appear, their intention was to accept their call only on the qualification that, after making up their train, they would then wait until the restaurant opened, the real result of their action was approximately the same as if they had accepted a 6:30, rather than a 4 o'clock call.

There are doubtless many circumstances in which crews are called at times and places which, if they are to care for themselves as well as to perform their work, they must be suitably prepared. In the instant case, it would appear the grievors were not so prepared, and in any event it is clear they delayed their train by taking time to eat, and the time so occupied was accordingly properly deducted.

J. F. W. WEATHERILL
ARBITRATOR